

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	Case No. 99-00957
JOSEPH S. MAKRIS and)	
AMANDA L. MAKRIS,)	MEMORANDUM OF DECISION
)	
Debtors.)	
_____)	

Jake W. Peterson, Boise, Idaho, for Debtors.

C. Grant King, Boise, Idaho, for Schroeder Enterprises.

Jennifer A. Galbreath, Meridian, Idaho, Pro Se.

Jed W. Manwaring, EVANS, KEANE, Boise, Idaho, for John Krommenhoek, Chapter 13 Trustee.

Unsecured creditor Jennifer Galbreath ("Creditor") objects, *pro se*, to confirmation of the proposed Chapter 13 plan of Debtors Joseph and Amanda Makris. On July 6, 1999, the Court conducted a hearing on confirmation of the proposed plan, at which Creditor and Debtors, through their attorney, appeared, along with the Chapter 13 Trustee. The Trustee advises the Court that Debtors' plan could be confirmed, but for Creditor's objection. The Court took the issues under advisement.

Creditor's objection states no specific grounds as to why the plan should not be confirmed, but instead generically suggests that confirmation of the plan would be inequitable and unjust. The Court will construe the objection as a challenge to Debtors' good faith in proposing the plan. See 11 U.S.C. § 1325(a)(3) (to be confirmed, plan must be proposed in good faith).

Debtor Joseph Makris owes Creditor about \$933 under a state court judgment. Money had evidently been loaned by Creditor to Debtor several years ago while the two were engaged in a personal relationship. In her objection, Creditor tells of the difficulty, delay and expense she has suffered in attempting to collect her claims, and the need she has for the money represented by the debt. She points to the fact that Debtors will retain two vehicles through the plan, and complains that the plan proposes payment to secured creditors on Debtors' home, vehicle and household goods in advance of her claim.

A review of Debtors' schedules show they own an average home and the usual furnishings. They do in fact own two vehicles, one a 1997 pickup worth \$19,800; the other a 1994 compact worth 5,100.¹ Debtors' plan, as recommended by the Trustee to properly fund, requires that they pay \$700 per

¹The schedules identify a third vehicle owned by Debtors, a 1976 pickup, which evidently is not in running condition, and has a value of \$200.

month to the Trustee for 52 months. From the payments, the Trustee will satisfy secured claims of about \$17,000 plus interest for the pickup; \$650 plus interest on the household goods; and about \$3,100 plus interest to cure a mortgage default. Debtors' schedules reveal they owe about \$1,300 in unpaid federal income taxes. Debtors do not have any dependents. Both are employed and their take home income is \$2,746 per month. Debtors list about \$2,106 in monthly living expenses. Debtors' budget and assets are otherwise unremarkable. Besides secured and tax debts, Debtors list about 25 other, mostly small, unsecured debts.

Section 1325(a)(3) of the Bankruptcy Code requires a Chapter 13 plan to be filed in good faith. 11 U.S.C. § 1325(a)(3). What constitutes good faith is not defined by the Code. Instead, "[b]ankruptcy courts must determine a debtor's good faith on a case-by-case basis, taking into account the particular features of each Chapter 13 plan." *In re Yochum*, 96.2 I.B.C.R. 77, 78 (*quoting In re Porter*, 102 B.R. 773, 775 (9th Cir. B.A.P. 1989)). A debtor bears the burden of establishing good faith. *Smyrnos v. Padilla (In re Padilla)*, 213 B.R. 349, 352 (9th Cir. B.A.P. 1997).

Some factors that should be considered in determining whether a debtor has proposed a plan in good faith under Section 1325(a)(3) are: (1) the

proposed payments of the plan and any surplus the debtor may have; (2) the debtor's employment history and likelihood of improvement in the future; (3) the duration of the plan; (4) accuracy of information in the plan; (5) extent of any preferential treatment among creditors; (6) extent of modification of secured claims; (7) type of debt sought to be discharged and whether that debt would receive similar treatment under chapter 7; (8) special circumstances of the debtor; (9) the debtor's frequency in seeking protection under the Bankruptcy Code; (10) the debtor's motivation and sincerity; and (11) the burden upon the trustee in administering the plan. *Id.* at 352-53; *In re Moore*, 188 B.R. 671, 678 (Bankr. D. Idaho 1995).

After reviewing the totality of the circumstances, the Court concludes that Debtors have proposed their plan in good faith. Debtors have agreed to make a significant monthly payment to the Trustee for over four years. From that payment, the Trustee will pay for Debtors' car and necessary household goods, will bring Debtors' mortgage current, and will satisfy Debtors' tax liability. Remaining amounts will be paid, pro rata, to their unsecured creditors.

Debtors are both employed, and it is no luxury for them to own two vehicles. While one of those autos is a pickup worth a substantial amount,

neither the kind of autos Debtors own, nor their total monthly transportation expense, offend the Court's conscience.

Creditor's claim against Debtor appears to be a valid one. Creditor is justifiably frustrated with her inability to collect her claim against Debtor.

However, in the context of a bankruptcy case, Congress has dictated that secured and priority creditors receive preference. Creditor must also appreciate that the claims of Debtors' other unsecured creditors are entitled to fair and equitable treatment in Debtors' bankruptcy case. In consideration of Debtors' willingness to pay their net disposable income to their creditors for a considerable time, Debtors will receive protection against debt collection during that time, and assuming all unsecured claims are not paid during the plan, a discharge of the balance of debt if Debtors successfully complete the plan. This is the system Congress has enacted to deal with individual debtors who cannot immediately pay their debts in full, and no good reason has been shown here for departure from that approach.

Creditor's objection to confirmation of Debtors' plan will be overruled and the plan will be confirmed upon submission of a proposed order by Debtors' counsel containing those changes to the plan required by, and otherwise acceptable to, the Chapter 13 Trustee.

DATED This _____ day of July, 1999.

JIM D. PAPPAS
CHIEF U.S. BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

Office of the U.S. Trustee
P. O. Box 110
Boise, Idaho 83701

Jake W. Peterson, Esq.
2309 Mountain View Drive, Suite 100
Boise, Idaho 83706

C. Grant King, Esq.
5440 Franklin Road, Suite 201
Boise, Idaho 83705

Jed W. Manwaring, Esq.
EVANS, KEANE
P. O. Box 959
Boise, Idaho 83701

John W. Krommenhoek
P. O. Box 8358
Boise, Idaho 83707

Jennifer A. Galbreath
3079 N. Hearth Ave.
Meridian, Idaho 83642

CASE NO.: 99-00957

CAMERON S. BURKE, CLERK
U.S. BANKRUPTCY COURT

DATED:

By _____
Deputy Clerk